

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

MICHAEL DEAN ALBERT,

Plaintiff,

vs.

PAUL REES, et al.,

Defendants.

CV 21-16-H-BMM-KLD

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Michael Dean Albert (“Albert”) filed this action against the several individual defendants under 42 U.S.C. § 1983, alleging deprivation of medical care during his incarceration. (Doc. 2). Defendants Heidi Abbott, Alishia Jameson, Paul Rees, Melissa Scharf, and Connie Winner moved for summary judgment on August 11, 2022. (Doc. 55.) Albert moved for a temporary injunction on April 13, 2022, alleging difficulties accessing discovery provided by Defendants. (Doc. 60.) Magistrate Judge DeSoto issued Findings and Recommendations on May 2, 2022. (Doc. 62.) Magistrate Judge DeSoto ordered Albert to respond to Defendants’ Motion for Summary Judgment. Magistrate Judge DeSoto further recommended that the Court deny Albert’s Motion for a Temporary Injunction.

(*Id.*) Albert filed a single brief to serve as both his response to Defendants' Motion for Summary Judgment and an objection to Magistrate Judge DeSoto's Findings and Recommendations. (Doc. 63.) Magistrate Judge DeSoto subsequently issued a second Findings and Recommendations in which she recommended granting Defendants' Motion for Summary Judgment. (Doc. 65.) Albert objected to Magistrate Judge DeSoto's Findings and Recommendations. (Doc. 66.)

The Court reviews de novo those Findings and Recommendations to which a party timely objected. 28 U.S.C. § 636(b)(1). The Court reviews for clear error the portions of the Findings and Recommendations to which the party did not specifically object. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Where a party's objections constitute perfunctory responses argued in an attempt to engage the district court in a reargument of the same arguments set forth in the original response, however, the Court will review the applicable portions of the findings and recommendations for clear error. *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Albert labeled his brief responding to Defendants' Motion for Summary Judgment as a "Motion Opposing Summary Judgment, Court's Findings, Recommendation and Order." (Doc. 63.) Nowhere within his brief does he actually

address, however, Magistrate Judge DeSoto's arguments regarding his Motion for a Temporary Injunction. *See (Id.)* Albert's subsequent objection to Magistrate Judge DeSoto's recommendation that the Court should grant Defendants' summary judgment motion similarly fails to advance any new arguments. (Doc. 66.) Albert objects generally to the outcome of Magistrate Judge DeSoto's recommendation, but he fails to raise any legal arguments. (*Id.*) The Court will not engage in Albert's attempt to reargue the same issues. The Court reviewed Magistrate Judge DeSoto's Findings and Recommendations for clear error. The Court finds no error.

Accordingly, **IT IS ORDERED** that:

1. Magistrate Judge DeSoto's Findings and Recommendations (Doc. 62; Doc. 65) are **ADOPTED IN FULL**.
2. Albert's motion for a temporary injunction (Doc. 60) is **DENIED**.
3. Defendants' Motion for Summary Judgment (Doc. 55) is **GRANTED**.
4. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
5. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

6. At all times during the pendency of this action, Albert must immediately advise the Court of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed. R. Civ. P. 41(b).

DATED this 2nd day of August, 2022.



Brian Morris, Chief District Judge
United States District Court